

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSEPH MUSUMECI,

Plaintiff,

-against-

MTD PRODUCTS INC., MTD PRODUCTS LTD.,
MTD HOLDINGS INC., MTD LLC, and
THE HOME DEPOT, INC.

Defendants.

Docket No. 07 CV 7535

ANSWER

(Jury Trial Demanded)

-----X
Defendants, MTD Products, Inc s/h/a MTD Products LTD., MTD Holdings Inc., MTD LLC ("MTD"), by its attorneys, Lynch Rowin LLP, as and for its answer to plaintiff's Complaint, states as follows:

JURISDICTION AND VENUE

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Denies the allegations in paragraph 2, except admits that MTD is a Delaware corporation, with a principal place of business in Ohio.
3. Denies the allegations in paragraph 3, except admits that MTD Products Limited is a Canadian corporation, with a principal place of business in Canada.
4. Denies the allegations in paragraph 4, except admits that MTD Holdings, Inc. is an Ohio corporation, with a principal place of business in Ohio.
5. Denies the allegations in paragraph 5, except admits that MTD LLC is an Ohio corporation, with a principal place of business in Ohio.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.
7. Denies the allegations in paragraph 7.
8. Denies the allegations in paragraph 8.

FIRST CLAIM FOR RELIEF

9. Denies the allegations in paragraph 9, except admits that MTD manufactures, among other things, snow throwers for retail sale and is authorized to do business in New York.
10. Denies the allegations in paragraph 10.
11. Denies the allegations in paragraph 11.
12. Denies the allegations in paragraph 12.
13. Denies the allegations in paragraph 13.
14. Denies the allegations in paragraph 14, except admits that MTD manufactures, among other things, snow throwers for retail sale and is authorized to do business in New York.
15. Denies the allegations in paragraph 15.
16. Denies the allegations in paragraph 16, except admits that MTD manufactures, among other things, snow throwers for retail sale and is authorized to do business in New York.
17. Denies the allegations in paragraph 17.
18. Denies the allegations in paragraph 18.
19. Denies the allegations in paragraph 19.
20. Denies the allegations in paragraph 20.
21. Denies the allegations in paragraph 21, except admits that MTD manufactures, among other things, snow throwers for retail sale and is authorized to do business in New York.
22. Denies the allegations in paragraph 22.
23. Denies the allegations in paragraph 23, except admits that MTD manufactures, among other things, snow throwers for retail sale and is authorized to do business in New York.
24. Denies the allegations in paragraph 24.
25. Denies the allegations in paragraph 25.
26. Denies the allegations in paragraph 26.
27. Denies the allegations in paragraph 27.
28. Denies the allegations in paragraph 28, except admits that MTD manufactures,

among other things, snow throwers for retail sale and is authorized to do business in New York.

29. Denies the allegations in paragraph 29.

30. Denies the allegations in paragraph 30, except admits that MTD manufactures, among other things, snow throwers for retail sale and is authorized to do business in New York.

31. Denies the allegations in paragraph 31.

32. Denies the allegations in paragraph 32.

33. Denies the allegations in paragraph 33.

34. Denies the allegations in paragraph 34.

35. Denies the allegations in paragraph 35, except admits that MTD manufactures, among other things, snow throwers for retail sale and is authorized to do business in New York.

36. Denies the allegations in paragraph 36.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37, except admits that MTD manufactures, among other things, snow throwers.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38, except admits that MTD manufactures, among other things, snow throwers.

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109. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 109.

110. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 110.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111.

112. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 112.

113. Denies the allegations in paragraph 113.

- 114. Denies the allegations in paragraph 114.
- 115. Denies the allegations in paragraph 115.
- 116. Denies the allegations in paragraph 116.
- 117. Denies the allegations in paragraph 117.
- 118. Denies the allegations in paragraph 118.
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- 138. Denies the allegations in paragraph 138.
- 139. Denies the allegations in paragraph 139.

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166. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 166.

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168. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 168.

169. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 169.

170. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 170.

171. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 171.

172. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 172.

173. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 173.

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175. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 175.

176. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 176.

177. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 177.

178. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 178.

179. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 179.

180. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 180.

181. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 181.

182. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 182.

183. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 183.

184. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 184.

185. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 185.

186. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 186.

187. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 187.

188. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 188.

189. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 189.

190. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 190.

191. Denies the allegations in paragraph 191, except admits that the United States Consumer Product Safety Commission did issue a voluntary recall of a snow thrower in cooperation with MTD.

192. Denies the allegations in paragraph 192, except admits that the United States Consumer Product Safety Commission did issue a voluntary recall of a snow thrower in cooperation with MTD.

193. Denies the allegations in paragraph 193, except admits that the United States Consumer Product Safety Commission did issue a voluntary recall of a snow thrower in cooperation with MTD.

194. Denies the allegations in paragraph 194.

195. Denies the allegations in paragraph 195.

196. Denies the allegations in paragraph 196.

197. Denies the allegations in paragraph 197.

198. Denies the allegations in paragraph 198.

199. Denies the allegations in paragraph 199.

200. Denies the allegations in paragraph 200.

201. Denies the allegations in paragraph 201.

202. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 202.

203. Denies the allegations in paragraph 203.

204. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 204.

205. Denies the allegations in paragraph 205.

206. Denies the allegations in paragraph 206.

207. Denies the allegations in paragraph 207.

208. Denies the allegations in paragraph 208.

209. Denies the allegations in paragraph 209.

210. Denies the allegations in paragraph 210.

211. Denies the allegations in paragraph 211.

212. Denies the allegations in paragraph 212.

213. Denies the allegations in paragraph 213.

214. Denies the allegations in paragraph 214.

215. Denies the allegations in paragraph 215.

216. Denies the allegations in paragraph 216.

SECOND CLAIM FOR RELIEF

217. Paragraphs 1 through 216 are re-alleged.

218. Denies the allegations in paragraph 218.

219. Denies the allegations in paragraph 219.

220. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 220.

221. Denies the allegations in paragraph 221.

222. Denies the allegations in paragraph 222.

223. Denies the allegations in paragraph 223.

224. Denies the allegations in paragraph 224.

225. Denies the allegations in paragraph 225.

THIRD CLAIM FOR RELIEF

226. Paragraphs 1 through 225 are re-alleged.

227. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 227.

228. Denies the allegations in paragraph 228.

229. Denies the allegations in paragraph 229.

230. Denies the allegations in paragraph 230.

231. Denies the allegations in paragraph 231.

232. Denies the allegations in paragraph 232.

233. Denies the allegations in paragraph 233.

234. Denies the allegations in paragraph 234.

235. Denies the allegations in paragraph 235.

236. Denies the allegations in paragraph 236.

FIRST AFFIRMATIVE DEFENSE

237. The verified complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

238. The amount of any damages otherwise recoverable by plaintiff should be diminished in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

THIRD AFFIRMATIVE DEFENSE

239. The injuries, losses or damages alleged to have been suffered by plaintiff were caused or contributed to by the comparative fault, negligence and lack of care of the plaintiff or other individuals for whose conduct MTD is not responsible.

FOURTH AFFIRMATIVE DEFENSE

240. The injuries, losses or damages alleged to have been suffered by plaintiff were caused or contributed to by the fault, negligence and lack of care of persons and/or individuals whom plaintiff has not named as parties to this action and who, in accordance with the provisions of Article 16 of the New York State Civil Practice Law and Rules, are necessary parties who plaintiff should have named.

FIFTH AFFIRMATIVE DEFENSE

241. The injuries, losses or damages alleged to have been suffered by plaintiff were the result of plaintiff's assumption of the risk of such injuries, losses or damages.

SIXTH AFFIRMATIVE DEFENSE

242. Plaintiff's causes of action are barred in whole or in part by the applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

243. Plaintiff's claims are barred in whole or diminished in part in an amount fairly allocable to any party with which plaintiff has settled or may settle.

EIGHTH AFFIRMATIVE DEFENSE

244. The limitations on joint and several liability set forth in New York State CPLR Article 16 are applicable to this action.

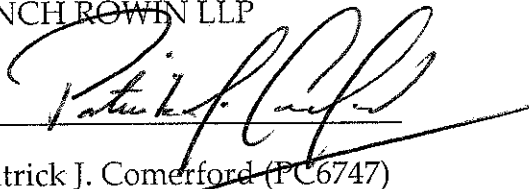
NINTH AFFIRMATIVE DEFENSE

245. In the event that some or all of the plaintiff's alleged economic losses were or will be replaced or indemnified from collateral sources, any award for economic loss should be reduced thereby.

WHEREFORE, Defendants demand judgment (a) dismissing the complaint, (b) awarding MTD costs and disbursements of this action, including attorneys fees, and (c) granting MTD such other relief as is just and proper.

Dated: New York, New York
October 4, 2007

LYNCH ROWIN LLP

By: 

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New York, New York 10017
(212)-682-4001

TO: LARKIN AXELROD INGRASSIA & TETENBAUM LLP
Attorneys for Plaintiff, Joseph Musumeci
356 Meadow Avenue
Newburgh, New York 12550